

P-403/CP-89-930 ORDER GRANTING PETITIONS TO INTERVENE AND FOR
CLARIFICATION AND ADOPTING RATES FOR POLLING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Thomas Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Petition of
Certain Subscribers in the
Winnebago Exchange for Extended
Area Service to the Blue Earth
Exchange

ISSUE DATE: July 2, 1992

DOCKET NO. P-403/CP-89-930

ORDER GRANTING PETITIONS TO
INTERVENE AND FOR CLARIFICATION
AND ADOPTING RATES FOR POLLING

PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On October 19, 1989, customers from the Winnebago exchange filed a petition for extended area service (EAS) to the Blue Earth exchange. Both exchanges are served by the Blue Earth Valley Telephone Company (Blue Earth).

On January 5, 1990, Olsen, Thielen & Co., Ltd., the accounting firm for Blue Earth, filed a traffic study and on January 12, 1990, cost studies and community of interest information were filed.

On April 27, 1990, the 1990 Legislature passed and the Governor signed into law new legislation regarding EAS, 1990 Minn. Laws Chapter 513. The portion of that statute governing EAS for non-metropolitan exchanges such as Winnebago and Blue Earth has been codified as Minn. Stat. § 237.161 (1990).

On July 5, 1990, the Commission required Blue Earth to file cost studies and proposed rates. In the Matter of the Petition of Certain Subscribers in the Winnebago Exchange for Extended Area Service to the Blue Earth Exchange, Docket No. P-403/CP-89-930, ORDER REQUIRING TRAFFIC STUDIES, COST STUDIES AND PROPOSED RATES (July 5, 1990).

On August 20, 1990 and again on September 10, 1990, Olsen, Thielen & Co., Ltd., the accounting firm that represents Blue Earth, filed cost studies and proposed rates. The September 10 filing provided additional cost study details.

On October 26, 1990, the Minnesota Department of Public Service (the Department) submitted its report and recommendation. The Department asserted that income neutrality applied to interexchange carriers (IXCs) as well as to local exchange companies (LECs). It recommended, therefore, that the Commission 1) direct USWC (then Northwestern Bell Telephone Company) to calculate its costs and income from the proposed routes and provide that information to Blue Earth; and 2) direct Blue Earth to refile its cost study including the effects of the USWC's toll contribution.

On November 15, 1990, Blue Earth filed response comments supporting the Department's recommendation regarding apportionment of costs and USWC filed the toll information requested by the Department's October 26, 1990 filing.

On August 9, 1991, the Commission issued its ORDER REQUIRING REFILED COST STUDIES AND PROPOSED RATES. Among other things, the Order required cost studies and proposed rates which included USWC's toll revenue contribution.

On August 26, 1991, USWC filed information regarding its toll revenue contribution as required by the August 9, 1991 Order.

On August 30, 1991, USWC filed a Motion for Clarification of the August 9, 1991 Order. USWC argued that it was not an "affected telephone company" and, hence, not required to be maintained income neutral by the EAS rates.

On September 19, 1991, the Department filed a reply to USWC's Motion for Clarification stating that USWC was indeed an "affected telephone company" in this matter.

On October 8, 1991, the Department requested a time extension for filing comments on the cost studies and proposed rates refiled by the parties in this matter pursuant to the August 9, 1991 Order. The Department requested an extension of 60 days from the date of the Commission's Order deciding what constitutes an "affected telephone company" in three joined EAS dockets: Hokah, P-401/CP-89-951; Northfield, P-421/CP-87-352; and Cannon Falls, P-407, 421/CP-87-216. The Department stated that depending on how the Commission decided the "affected telephone company" issue in Hokah, the Department would recommend rates in the Winnebago case that included or excluded USWC's toll contribution.

On October 25, 1991, Blue Earth filed comments supporting the Department's position on the "affected telephone company" issue.

On November 5, 1991, the Minnesota Independent Coalition (MIC) petitioned to intervene.

On November 19, 1991, the Commission issued its ORDER DEFERRING ACTION AND EXTENDING TIME FRAME in this docket. In this Order, the Commission provided that the time frames established in the August 9, 1991 Order would take effect on the date of the final Order in the Hokah, Northfield, and Cannon Falls dockets.

On November 21, 1991, the Commission issued its ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990) in the Hokah, Northfield, and Cannon Falls dockets and upheld that decision in its January 29, 1992 ORDER DENYING PETITIONS FOR RECONSIDERATION.

On April 21, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. MIC'S PETITION TO INTERVENE

MIC meets the requirement for intervention as a party under Minn. Rules, Part 7830.0600 and will be allowed to intervene in this matter. MIC represents approximately 84 independent telephone companies (ILECs) operating in Minnesota. MIC members who serve petitioning exchanges for proposed EAS routes where USWC serves only as an interexchange carrier have a current interest in how the term "affected telephone company" is defined.

III. USWC'S PETITION FOR CLARIFICATION

A. BACKGROUND

On August 9, 1991, the Commission issued an Order that treated USWC as an "affected telephone company" and required it to file information regarding its toll contribution to Blue Earth. USWC filed a Petition for Clarification of that Order pursuant to Minn. Rule, part 7830.4100. USWC requested that the Commission clarify that USWC was not an "affected telephone company" under Minn. Stat. § 237.161, subd. 3 (b).

On September 19, 1991, the Department filed a reply opposing USWC's petition, arguing that USWC was, indeed, an "affected telephone company". The Department noted the Commission had previously found USWC an "affected telephone company" under similar circumstances. The Department cited In the Matter of a Petition for Extended Area Service From the Easton Exchange to the Wells Exchange, Docket No. P-519, 403/CP-89-703, ORDER REQUIRING REVISED COST STUDIES AND PROPOSED RATES June 11, 1991. The Department further argued that USWC's position defied the plain language of Minn. Stat. § 237.161, was not supported by the

legislative history, and would sharply increase Winnebago's and Blue Earth's EAS rates over what they would be if USWC was not treated as an "affected telephone company".

Meanwhile, in related but separate dockets, beginning with an Order issued July 16, 1991, the Commission, at the Department's request, had undertaken to construe the term "affected telephone company": P-421/CP-87-352 (Hokah); P-407, 421/CP-87-216 (Northfield); and P-401/CP-89-951 (Cannon Falls). The Commission established a formal comment and reply procedure and directed all the IXCs serving the EAS routes proposed in those dockets to file comments. Hokah, Northfield, and Cannon Falls EAS Petitions, Docket Nos. P-421/CP-87-352; P-407, 421/CP-87-216; and P-401/CP-89-951, ORDER ESTABLISHING COMMENT AND REPLY PROCEDURE (July 16, 1991).

In response, the Commission received comments from the Department and 11 IXCs: GTE Minnesota, USWC, United Telephone Company, Century Telephone Company, Vista Telephone Company, AT&T Communications of the Midwest (AT&T), Metromedia, Access Plus, MCI Telecommunications Corporation (MCI), Telecom*USA, and Allnet. In its comments filed October 2, 1991, the Department presented arguments similar to those that it had presented in its September 19, 1991 comments in this matter opposing USWC's Motion for Clarification of the Commission's August 9, 1991 Order. The Department argued that the plain meaning of the statute indicated that IXCs serving the proposed EAS routes were "affected telephone companies", that the legislative history supported that conclusion, and that the impact of not considering IXCs as "affected" would be to give USWC a windfall in contribution as a result of the proposed EAS conversions.

On November 21, 1991, the Commission issued its ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990) in the Hokah-Northfield-Cannon Falls proceeding. In that Order, the Commission considered the arguments of the parties at length and conducted a thorough analysis of the statute. The Commission found that the term "affected telephone company" does not extend to IXCs and that, therefore, the statute does not require that EAS rates be set to maintain IXCs income neutral. On January 29, 1992, the Commission affirmed this decision, denying the Department's petition for reconsideration. Hereafter, the Commission's November 21, 1991 Order in those three joined dockets will be referred to as the Hokah Order.

1. The Role of Precedent in This Matter

In oral argument before the Commission, the Department stated that the Commission has established two contradictory precedents with respect to this issue and is free, therefore, to select which precedent it will follow in this matter. The Department stated the Commission created a precedent in Hokah that USWC is

not an "affected telephone company" when it serves as an IXC¹. Of equal weight, however, according to the Department, is the precedent created by the Commission's June 12, 1991 Order in the Easton EAS docket and its August 12, 1991 Order in this docket that USWC is an affected telephone company that must be maintained income neutral in the EAS rate setting process.²

The Commission disagrees. In the Commission's June 12, 1991 Order in the Easton-Wells case and the August 9, 1991 Order in this matter, the determination of what is an affected telephone company was not a contested issue and the Commission merely accepted the Department's cost study formula which had incorporated their definition of an affected telephone company. Shortly thereafter, however, in responding to a Department motion to clarify the meaning of the term, the Commission had occasion to interpret the statute following briefing and oral argument by many parties on the question of what is an "affected telephone company".³ The resulting Hokah Order (November 21, 1991) provided extensive analysis of the statute in question. Based on that extensive statutory analysis, Hokah expressly interpreted the term and held that an interexchange company that carries toll traffic over proposed routes is not an affected telephone company. The holding in the Hokah Order is appropriately now the precedent for this case. The Hokah Order has been upheld by the Commission following reconsideration and has not been overturned by any subsequent Commission Order.

¹ Hokah-Northfield-Cannon Falls EAS Petitions, Docket Nos. P-421/CP-87-352; P-407, 421/CP-87-216; and P-401/CP-89-951, ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990) (November 21, 1991) and ORDER DENYING THE DEPARTMENT'S PETITION FOR RECONSIDERATION (January 29, 1992).

² Easton EAS Petition, Docket No. P-519, 403/CP-89-703, ORDER REQUIRING REVISED COST STUDIES AND PROPOSED RATES (June 11, 1991) and the August 11, 1991 Order in this matter.

³ In a motion filed April 22, 1991, the Department asked the Commission to clarify its definition of what is an affected telephone company. As a result of the Department's request the Commission asked for comments and received comments from GTE Minnesota, USWC, United Telephone Company, Vista Telephone Company, AT&T, Metromedia Telephone Company Access Plus Telephone Company, MCI, Telecom*USA, Allnet and the Department. As a result of the extensive comments the Commission first gave its first articulated rationale for its interpretation of the Minn. Stat. § 237.161, subd. 3 (1991) in the Hokah Order, November 21, 1991.

In such circumstances, the applicable principles of administrative law are clear. While the Commission always has the discretion to depart from or change its precedent provided that it has sound reasons for doing so, to avoid the charge of arbitrary inconsistency, the Commission must treat similar situations consistent with its precedent or give sound reasons for departing from that precedent.⁴

Accordingly, USWC's petition for clarification (its request that its toll contribution be excluded from a calculation of EAS rates in this matter) must be treated consistent with Hokah and be granted unless the Commission finds 1) that Winnebago is distinguishable from Hokah on material facts or 2) that there are sound reasons for treating these similar situations differently.

No party has argued that Winnebago situation is distinguishable from Hokah on the material facts. In fact, in its October 8, 1991 request for an extension in this (Winnebago) matter, the Department indicated that it viewed the IXC questions raised in the Winnebago docket and the Hokah-Northfield-Cannon Falls dockets as identical. The Department requested a time extension for filing comments regarding cost studies and proposed rates until 60 days after the Commission ruled on what constitutes an affected telephone company in the Hokah-Northfield-Cannon Falls dockets. The Department stated:

The Department believes that the most efficient method of advancing the Winnebago to Blue Earth docket is to wait until the Commission has ruled on the affected telephone company issue [in the Hokah-Northfield-Cannon Falls dockets]. Depending on the Commission's ruling, the Department would either file comments which would include toll contribution amounts provided by USWC or file comments excluding USWC's toll contribution.

The Commission finds that Winnebago is similar to Hokah et al. with respect to the issue in question here. In both instances,

⁴ Consistent with this principle, in a separate Order issued this day in the Easton docket, the Commission brings treatment of USWC in that petition into line with the Commission's decision in Hokah. In the Matter of a Petition for Extended Area Service From the Easton Exchange to the Wells Exchange, Docket No. P-519, 403/CP-89-703, ORDER RECONSIDERING JUNE 11, 1991 ORDER AND APPROVING RATES FOR POLLING (July 1, 1992). Also note that Orders addressing this issue subsequent to the November 21, 1991 Hokah Order have not departed from the Hokah analysis. See, e.g. In the Matter of a Petition for Extended Area Service From the Loman Exchange to the International Falls, Ericsburg, and Ranier Exchanges, Docket No. P-407/CP-90-547 (March 25, 1992).

USWC serves proposed EAS routes solely as an IXC. Pursuant to administrative law principles, therefore, the Commission will apply the precedent established in the Hokah Order unless it finds sound reasons to do otherwise.

2. Parties Opposing USWC's Petition

a. Blue Earth Valley Telephone Company

Blue Earth filed written comments arguing that the Commission should deny USWC's motion for Clarification and treat it as an "affected telephone company". Blue Earth argued that to do otherwise would ignore the plain language of Minn. Stat. § 237.161, subd. 3(b) and would result in a windfall for USWC at the expense of Blue Earth's ratepayers. Blue Earth noted that it is a well established principle of statutory construction that when the language of the statute is clear and unambiguous, the statutory language controls and is not subject to varying interpretations to suit the interests of any particular party.

The Commission agrees with the principles of statutory construction cited by Blue Earth. However, unlike Blue Earth, the Commission finds that the statute clearly and unambiguously indicates that an IXC is not an "affected telephone company" required to be maintained income neutral under the EAS statute.

b. Minnesota Independent Coalition

In its Petition to Intervene in this matter, MIC expressed an interest in having input regarding USWC's Petition for Clarification and announced its opposition to USWC's petition but provided no specific analysis of the statute in question. MIC filed no subsequent argument opposing USWC's petition. In oral argument before the Commission, MIC stated that the Commission's earlier decisions on this issue (the August 9, 1991 Order in this matter and the June 11, 1991 Easton Order) were correct. MIC asserted that the plain meaning of the statute indicated that USWC was an affected telephone company and noted that the effect of not considering USWC an affected telephone company would greatly increase their customers' EAS rates.

c. Office of the Attorney General

The OAG filed no written comments regarding USWC's Petition. In oral argument, however, the OAG argued that USWC was an affected telephone company in the plain meaning of that phrase, that under an established canon of legislative construction it is to be assumed that the legislature did not intend an absurd result (i.e. not treating USWC as an "affected telephone company"), and that under the canons of statutory construction an interpretation that favors the public interest as against a private interest is favored. The OAG also stated that if USWC were treated as an

affected telephone company and required to make payments to affected LECs in the amount of their previous toll contribution, a rulemaking or a true-up mechanism could be employed to prevent USWC from being required to continue to make those payments to the LECs in perpetuity.

The OAG's argument regarding the plain meaning of the statute was previously considered and rejected in the Hokah Order. The OAG offered no new argument to alter the Commission's evaluation of the "plain meaning" argument.

Regarding the OAG's absurdity argument, it is not the Commission's role to second guess the legislature and amend statutes through interpretation in order to avoid what some parties, viewing the matter from their particular perspective, would characterize as an absurd result. Whether the alleged absurdity resulting from the Commission's interpretation is characterized as a "windfall" for USWC or higher EAS rates, those results appear the result of the legislature's decision that the beneficiaries of EAS will bear the costs of that service. The Commission's view on that matter is reinforced by the fact that the legislature met following the Commission's decision in Hokah and maintained the current statutory language. If the legislature disagreed with the Commission's interpretation of the statute, it could have amended the statute to clearly indicate that it desired a different result.

The OAG further asserted that the interpretive presumption in favor of the public interest militates against the Commission's interpretation. Minn. Stat. § 645.17 (5) (1990). Implicit in the OAG's argument is the assumption that its interpretation that an IXC is an affected telephone company favors the "public interest" against USWC's "private interest". This is not true. In this particular case, the OAG's interpretation favors the LEC serving the petitioning and petitioned exchange (Blue Earth) and the prospective EAS customers for that route. However, in cases where the toll route to be displaced by EAS is profitable, the OAG's interpretation would favor the IXC and disfavor the EAS customers by raising the EAS rates to compensate the IXC for loss of income from that route.

More fundamentally, the OAG erred in automatically equating the interest of Winnebago EAS consumers with the "public interest" and overlooking the fact that under its proposed interpretation, rates paid by other telephone consumers (USWC's IXC customers) would subsidize the lower EAS rates of Winnebago customers.⁵

⁵ According to the RUD-OAG's interpretation, USWC's interexchange customers would be required to bear the burden of continuing contribution payments to Winnebago's LEC in order to lower the EAS rates paid by Winnebago subscribers. The

Reading the entire statute, however, it appears that the legislature, the ultimate arbiter of the public interest in this matter, has established a system that requires the beneficiaries of an EAS system to pay for it. The OAG is free to disagree with the legislature's determination of what serves the public interest in this matter. However, in interpreting the statute, the Commission recognizes the legislature as the ultimate definer of the public interest. The Commission will not substitute its judgement for the legislature's.

Finally, the OAG acknowledged that an "absurd" result of its proposal to treat USWC as "affected telephone company" would be that USWC as an IXC would be required to continue making "contribution payments" to Blue Earth indefinitely even though it

no longer provided any IXC service to that exchange. The RUD-OAG's suggestion of a rulemaking or true up mechanism do not cure this fundamental problem.

More importantly, the RUD-OAG's attempt to ameliorate the absurd result of its interpretation by suggesting a rulemaking or a true up misinterprets the basis of the Commission's rejection of the proposition that IXCs are "affected telephone companies." The foundation of the Commission's analysis in Hokah was not the projected results of that interpretation. Such an approach, determining what the statute says based upon the projected results of that interpretation, is backwards. The Commission's interpretation is based upon a full reading of the EAS statute which fully reveals the legislature's intent.

d. The Department

In addition to the precedent argument discussed previously in this Order, the Department argued that the plain language of Minn. Stat. § 237.161, subd. 3(b) (1990) makes USWC an "affected telephone company" whose income must remain neutral when the Commission sets EAS rates. The Department also argued that the legislative history supported finding that USWC was an "affected telephone company". Finally, the Department stated that not treating USWC as an affected telephone company will increase EAS rates to ILEC to ILEC routes astronomically. The Department stated that it did not believe these increases were in the public interest. In oral argument, the Department reiterated those positions, illustrating the rate impacts with graphs.

The "plain language" argument and the "rate impact" argument have been discussed previously. The Department's legislative history argument is likewise unpersuasive. When, as here, the statute

Commission finds no basis in the statute for that subsidization of Winnebago subscribers by USWC's IXC customers.

read as a whole is clear and unambiguous, the Commission is precluded from attempting to change the legislative expression through recourse to extrinsic considerations such as legislative history. The Minnesota Supreme Court states the rule as follows:

No room for judicial construction exists when the statute speaks for itself. Commissioner of Revenue v. Richardson, 302 N.W.2d 23,26 (1981).

In short, the Commission finds nothing to alter the analysis of the statute adopted by the Commission in the Hokah Order. In fact, further review of the statute reveals additional support for the view that the statute does not include IXCs as "affected telephone companies" and does not require the IXCs to be held income neutral.

The term "income neutral" appears only once in the statute and the sole mechanism provided by the legislature for achieving income neutrality is rates. The statute states:

The Commission shall establish rates that are income neutral for each affected telephone company at the time which the Commission determines the extended area service rates. (Emphasis added.) Minn. Stat. § 237.161, subd. 3(b) (1990).

It may be inferred from the mechanism selected by the legislature to achieve income neutrality (i.e. rates) what telephone companies the legislature intended to be maintained income neutral. Since the Commission does not set rates for IXCs "at the time it determines the extended area service rates," the only possible conclusion is that the legislature did not intend the IXCs to be held "income neutral."

To achieve income neutrality among IXCs "at the time it determines the [EAS] rates," the Commission would either have to order the IXC to make payments to the affected LEC for routes that had been unprofitable and order the LEC to make payments to the IXC for routes that had been profitable, or it would have to change IXC rates every time it established EAS rates. Since the legislature has declared that IXC rates are subject to emerging competition in Minn. Stat. § 237.57, subd. 1 (11) (1990), it would be inconsistent to a competitive interexchange long distance market to saddle companies with perpetual accounting adjustments to LECs for long distance routes that no longer exist or with rate change proceedings every time a new exchange installed EAS. The Commission also has a long standing policy that competition in long distance markets to be in the public

interest⁶. It would unreasonably encumber that market and thwart this policy directive to interpret Minn. Stat. § 237.161, subd, 3 (b) (1990) in the manner suggested by the Department.

Finally, the Department asserted that the statutory language requiring the Commission to "consider the interests of all parties..." (Minn. Stat. § 237.161, subd. 3 (b) (1990) requires the Commission to order IXCs to pay LECs on unprofitable toll routes and to order LECs to pay IXCs for profitable toll routes. However, a reading of the complete sentence in which the "interests of all" phrase appears demonstrates that it clearly applies solely to the Commission's rate-setting for the local exchange and does not authorize, let alone require, the Commission to order payments from one company to another to maintain an IXC income neutral. The statute states:

The commission shall consider the interests of all parties when determining a fair and equitable extended area service rate for a local telephone exchange that is newly included in the extended are service.
(Emphasis added.) Minn. Stat. § 237.161, subd. 3 (b) (1990).

3. Commission Action Regarding the "Affected Telephone Company" Issue

Having examined the parties' arguments, the Commission finds no sound reason to deviate from the finding in Hokah that Minn. Stat. § 237.161, subd. 3 (b) (1990) refers solely to the local exchange companies serving the petitioning exchange and the petitioned exchange or exchanges and does not refer to IXCs that carry toll traffic over proposed EAS routes.

Accordingly, the Commission will grant USWC's Petition for Clarification. USWC is not an "affected telephone company" in this matter and the Commission will not require it to continue paying toll contribution to Blue Earth following the implementation, if any, of the proposed EAS route between Winnebago and Blue Earth. USWC's toll contribution to Blue Earth will not be included in calculating the EAS rates for this proposed EAS route.

III. ADDITIONAL RATE ISSUES

⁶ In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate Intercity Telecommunications Services Within the State of Minnesota, Docket No. P-442, 443, 444, 421, 433/NA-84-212, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (October 15, 1985).

A. Stimulation Factor

EAS rates are calculated to recover, among other things, the cost of facilities required of the telephone company serving the petitioning exchange to implement EAS. Minn. Stat. § 237.161, subd. 2 (1990). Calculation of the facilities so required must take into account the growth in telephone calls between the petitioning and petitioned exchanges that will be stimulated by the availability of EAS service. Often the parties to EAS proceedings have disagreed whether the proper stimulation factor to use in making those projections should be 5 or 7.

Because Blue Earth serves the Winnebago exchange by a host-remote installation, it plans to simply install line cards to handle the EAS traffic between Winnebago and Blue Earth. Those cards can handle up to 24 circuits of EAS traffic, adequate capacity regardless of whether call growth is stimulated by a factor of 5 or 7.⁷ Since no different line card investment is required regardless of which stimulation factor is more accurate, the Commission need not determine which stimulation factor is more likely to be accurate in this case. Instead, the Commission will simply find that Blue Earth's proposed line card investment is appropriate and require that amount to be included in calculating EAS rates.

B. Allocation of Revenue Requirement

The EAS statute divides EAS petitions into two groups: petitions for EAS to the metropolitan calling area and all other EAS petitions. For petitions to the metropolitan calling area the statute mandates that the petitioning exchange rates defray 75% of the costs of providing EAS. For other petitions, however, the statute leaves to the sound discretion of the Commission what percentage (between 50 and 75%) of EAS costs the petitioning exchange will be required to defray in its rates.

Minn. Stat. § 237.161, subd. 3 (a) (1990) states in pertinent part:

When the proposed extended service area is not the metropolitan calling area, the commission shall determine the apportionment of costs, provided that between 50 and 75 of the costs must be allocated to the petitioning exchange.

The Department argued that because the EAS implementation process allows Winnebago subscribers to vote whether EAS will be

⁷ If traffic growth is stimulated by a factor of 5, 16 of those circuits will be used. If stimulation factor of 7 is achieved, 21 circuits will be used.

installed but denies the same opportunity to subscribers in the petitioned local calling area, it is fair that Winnebago defray the maximum statutory amount of EAS costs, i.e. 75% of those costs. The traffic studies indicated that many more Winnebago subscribers call the Blue Earth exchange than the other way around. According to the Department, this suggests that Winnebago subscribers will receive the bulk of the benefit of the proposed EAS, which supports the maximum cost allocation (75%) to Winnebago.

The Commission does not find these considerations dispositive in this case.⁸

The Voting/Payment Link: The legislature did not establish a link between voting and payment of 75% of the costs. According to the statutory process, subscribers in the petitioning exchange are the only subscribers polled in all cases. Knowing this, the legislature clearly stated that rates for non-metro petitions could be set between 50 and 75 percent. This indicates that the legislature intended other factors to control the percentage of cost to be allocated to the petitioning exchange.

Benefit/Burden Balancing: The benefits to be derived from the proposed EAS are not totally one-sided. After all, toll free calling from Winnebago to Blue Earth does not simply benefit the calling party, but also benefits the Blue Earth recipients of those calls. Further, analysis of the benefit must take into account not only the location of subscribers currently placing calls between the petitioning and petitioned exchanges, but must also consider the value to the petitioned exchanges of the additional calls from the petitioning exchange that EAS will stimulate. Finally, it is likely that the proposed EAS will also stimulate additional calling from the petitioned exchanges to the petitioning exchange.

An analysis of who benefits from the installation of the proposed EAS must be balanced with consideration of the relative burden to be borne by subscribers in the involved exchanges under various cost allocation proposals. Regarding the burden of absorbing the costs of providing the proposed EAS, it is clear that in this case that the Winnebago subscriber's burden of providing EAS rises significantly compared to the increase in the burden to subscribers in the Blue Earth exchange when more than 25% of the cost are recovered in their rates. This is due to the smaller

⁸ For a similar discussion and analysis see: In the Matter of a Petition for Extended Area Service From the Loman Exchange to the International Falls, Ericsburg, and Ranier Exchanges, Docket No. P-407/CP-90-547, ORDER ADOPTING RATES FOR POLLING (March 25, 1992).

number of Winnebago subscribers available to absorb such costs.

The Commission is impressed by the effort to link and build Winnebago and Blue Earth discussed by the Winnebago representative but finds that the relative sizes of the communities does not support assessing a full 50% of the costs against the petitioned exchange, Blue Earth. Weighing the benefits and burdens of the proposed EAS within the statutory framework, the Commission concludes that in this case a 60/40 allocation of EAS expenses results in fair and equitable rates. The Commission will adopt for polling rates that are structured on that basis.

ORDER

1. Minnesota Independent Coalition's (MIC's) Petition to Intervene in this matter is granted.
2. The petition of U S West Communications, Inc. (USWC) for clarification of the August 9, 1991 Order in this matter is granted as follows: USWC is not an "affected telephone company" pursuant to Minn. Stat. § 237.161, subd. 3 (1990) in this matter and its toll contribution to Blue Earth will not be included in calculating EAS rates for the EAS route proposed between Winnebago and Blue Earth.
3. The Commission hereby adopts for polling extended area service (EAS) rates for the petitioning Winnebago exchange that
 - a. maintain Blue Earth Telephone Company income neutral without taking into account USWC's toll contribution to Winnebago;
 - b. absorb Blue Earth's proposed investment in line cards;
 - c. absorb 60% of the costs of providing the proposed EAS; and
 - d. comply with Minn. Stat. § 237.161 (1990) in all other respects as well.

Those rates are:

WINNEBAGO		BLUE EARTH	
<u>Residential</u>	<u>Business</u>	<u>Residential</u>	<u>Business</u>
\$5.30	\$10.01	\$1.45	\$2.72

4. Blue Earth Telephone Company (Blue Earth) shall cooperate fully with Commission Staff and Commission contractors to expedite the polling of Winnebago subscribers. As part of this cooperation, Blue Earth shall provide Commission Staff upon request with a customer list for the Winnebago exchange and associated information in a timely fashion.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)